

United States District Court
Eastern District of Missouri

United States of America
ex rel. M.J. Products, Inc.

Plaintiff,
v.

Old Republic Surety Company
Attention Claims Dept.
Serve office in charge
445 S.Moorland Road, Suite 200
Brookfield, WI 53005

Defendant.

Cause No. _____

Judge _____

CIVIL ACTION UNDER THE MILLER ACT AND FOR OTHER RELIEF

COUNT I

(Repairs at NOSC St. Louis – Bond No. RCN2138989 – \$23,860.70)

Comes now Plaintiff M.J. Products, Inc. and for Count I of its cause of action states to the Court as follows:

1. That Plaintiff M.J. Products, Inc. is and at all times stated was a corporation in good standing. Defendant Old Republic Surety Company is an insurance company which is authorized to do business and does business in the state of Missouri and is the surety for the project described herein.

2. This Court has jurisdiction of this action and these parties pursuant to United States Code, Title 40, Sections 3131 and 3133 (b).

3. Plaintiff M.J. Products, Inc. further states that on or before September 19, 2014, J L Brown Contracting Service Inc., as "general contractor," entered into a written contract with the United States of America (through NAVFAC Midwest Public Works Department, PWD Midsouth FEAD) for repairs at NOSC (Naval Operations Support Center) St. Louis, Missouri located at 10800

Lambert International Blvd., Bridgeton, MO 63044. Contract number N40083-14-R-5016 for a principal sum in excess of \$100,000.00 (hereinafter the "project").

4. Plaintiff M.J. Products, Inc. further states that on or after September 25, 2014, J L Brown Contracting Service Inc., together with Defendant Old Republic Surety Company, duly executed and delivered to the United States of America a payment bond for the protection of all persons supplying labor or materials or both in the prosecution of the work provided in said contract; said bond was numbered #RCN2138989 and was executed in accordance with the provisions of the United States Code, Title 40, Section 3133, in the penal sum of \$1,196,102.11. A true copy of said bond is marked Exhibit "1," attached hereto and incorporated by reference herein.

5. Between the dates of February 3, 2015 and June 17, 2015, Plaintiff, at the special instance and request of J L Brown Contracting Service Inc. supplied labor and materials to J L Brown Contracting Service Inc. for use in the project. All of the goods and services so purchased were used in the project and became a part thereof. The prices charged for each item were and are the reasonable value thereof and were agreed to by J L Brown Contracting Service Inc.; the total of all items was reasonably worth the amount charged, and the amount due for same after allowing all just credits and set-off is \$23,860.70, and that demand for payment of said amount due was made upon J L Brown Contracting Service Inc. on or about June 17, 2015, and at numerous times before and after but said J L Brown Contracting Service Inc. failed and refused to pay said sum or any portion thereof. A true copy of the Statement marked

Exhibit "2," is attached hereto and incorporated by reference herein. A true copy of the written contract between J L Brown Contracting Service Inc. and Plaintiff marked Exhibit "3," is attached hereto and incorporated by reference herein.

6. J L Brown Contracting Service Inc. breached the aforesaid agreement entered into with Plaintiff by failing to pay the aforesaid contract price for the materials sold and provided. All conditions precedent for payment to Plaintiff under the above referenced contract have been met.

7. That as a result of J L Brown Contracting Service Inc.'s breach of contract, Plaintiff is entitled to judgment in the sum of \$23,860.70, plus interest from June 17, 2015 at 9.00% per annum, the legal rate prevailing at the place where the project is located, pursuant to the above referenced Contract.

8. Plaintiff M.J. Products, Inc. further states that the last date on which it furnished materials for the project was June 17, 2015. The primary contract was completed on or after June 17, 2015, if completed at all. A period of more than 90 days has elapsed since the last date on which Plaintiff supplied labor and materials to J L Brown Contracting Service Inc. and J L Brown Contracting Service Inc. has not paid for the labor and materials.

9. Plaintiff M.J. Products, Inc. states that no later than October 15, 2015 and within 90 days of last furnishing labor and materials to J L Brown Contracting Service Inc. for the project, Plaintiff, pursuant to United States Code Title 40, Section 3133 (b)(2) served written notice of its claim for unpaid labor and materials for this project totaling \$23,860.70 on Defendant Old Republic Surety Company. Such notice was duly served by fax, email and by UPS Next

Day Delivery, in the manner provided for in the statute by stating the amount of money claimed, the name of the party to whom the labor and materials were furnished, and in all respects complying with the statute.

10. On Oct.14, 2015 J L Brown Contracting Service Inc. filed a voluntary Petition for Relief under Chap 11, Title 11 of the US Code in the United States Bankruptcy Court for the Eastern District of MO, Case No. 15-47718.

11. Under the express language of the Miller Act (40 U.S.C. § 270b(a)), a suit may be maintained by a subcontractor against the Miller Act surety without joining the general contractor. *U.S. for Use of Henderson v. Nucon Const. Corp.*, 49 F.3d 1421 (1995).

WHEREFORE, the United States of America on behalf and for the use of Plaintiff M.J. Products, Inc. prays judgment against Old Republic Surety Company for the sum of \$23,860.70 together with interest from June 17, 2015 at the maximum rate; for the costs of this action; and for such other and further relief as the Court may deem just and proper.

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